



## *Report to the Auburn City Council*

Action Item	6
Agenda Item No.	
City Manager's Approval	

**To:** Mayor and City Council Members

**From:** Lance E. Lowe, AICP, Associate Planner *[Signature]*

**Date:** March 28, 2011

**Subject:** Second Reading of an Ordinance Amending Section 159.019 of the Auburn Municipal Code for Medical Marijuana Dispensaries. The proposed Amendment Provides Non-Criminal Penalties for Violation of the City's Prohibition of Medical Marijuana Dispensaries.

### *The Issue*

Should the City Council approve the Second Reading of an Ordinance Amending Section 159.019 of the Auburn Municipal Code for Medical Marijuana Dispensaries (**Attachment 1**)?

### *Conclusions and Recommendation*

Staff recommends that the City Council take the following action:

Hold a Second Reading, by title only, of an Ordinance Amending Section 159.019 of the Auburn Municipal Code for Medical Marijuana Dispensaries. The Proposed Amendment Provides Non-Criminal Penalties for Violation of the City's Prohibition of Medical Marijuana Dispensaries.

### *History/Background*

On March 14, 2011 the Auburn City Council held a duly noticed public hearing and adopted the draft Medical Marijuana Ordinance (AYES: Holmes, Hanley, Powers & Kirby; NOES: Nesbitt;).

The proposed text amendment continues to prohibit Medical Marijuana Dispensaries in all zones of the City; however, in lieu of criminal penalties for any such violation(s), non-criminal penalties would be imposed.

The proposed text amendment of Section 159.019 avoids conflicts with the provisions of the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA), which decriminalizes possession and cultivation of marijuana for specified medical purposes (**Attachment 2 of the February 1, 2011 Planning Commission Staff Report**).

A Second Reading is required to finalize the processing of the Ordinance. Should the City Council decide to adopt the Second Reading of the Ordinance on March 28, 2011, the Ordinance will become effective in thirty (30) days.

**Alternatives Available to Council; Implications of Alternatives**

- A. Hold a Second Reading and adopt Ordinance as presented;
- B. Deny the Second Reading; or,
- C. Amend the Ordinance and Introduce and hold a first reading, by title only, of Section 159.019, as amended.

**Fiscal Impacts**

The staff costs incurred for the preparation of the zoning ordinance amendment, in consultation with the City Attorney and Police Chief, has been budgeted.

**Additional Information**

Please see the following attachments for more details:

**ATTACHMENT –**

- 1. Draft Zoning Code Amendment of Section 159.019

**EXHIBIT –**

- A. March 14, 2011 City Council Staff Report with Attachments (On File with the City Clerk)



# ATTACHMENT

ORDINANCE NO. 11-\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF AUBURN AMENDING  
SECTION 159.019 OF THE AUBURN MUNICIPAL CODE

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THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS:

**Section 1. Code Amendment.** Section 159.019 of the Auburn Municipal Code regarding prohibited zoning uses and medical marijuana dispensaries is hereby amended to read as follows:

"§ 159.019 PROHIBITED USES.

The following uses are prohibited in all zones established by this chapter and may not be conducted anywhere in the city:

(A) Medical marijuana dispensaries or any other facility or use which involves the distribution of drugs or other substances which it is illegal to distribute or possess under state or federal law.

(1) No conduct which is protected from criminal liability pursuant to the Compassionate Use Act (Health & Safety Code, § 11362.5) and the Medical Marijuana Program Act (Health & Safety Code, §§ 11362.7 through 11362.83) shall be made criminal by this code. Such conduct that violates the requirements of this code shall be subject to non-criminal remedies only."

**Section 2. Severability.** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**Section 3. Effective Date.** This Ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937.

**Section 4. Construction.** To the extent the provisions of the Auburn Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this ordinance, they shall be read as continuations of those earlier provisions and not as new enactments.

**Section 5. Certification.** The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: March 28, 2011

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William W. Kirby, M.D., Mayor

ATTEST:

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Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 28<sup>th</sup> day of March 2011 by the following vote on roll call:

Ayes:  
Noes:  
Absent:

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Joseph G. R. Labrie, City Clerk

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